Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-295

ALBERT SIMON, INC., and
SEABOARD NEW YORK CORPORATION
Appellants,

v.

BESS MYERSON, AS COMMISSIONER
OF THE DEPARTMENT OF CONSUMER
AFFAIRS OF THE CITY OF NEW YORK,
Appellee.

ON APPEAL FROM THE STATE OF
NEW YORK COURT OF APPEALS

OPPOSITION TO MOTION TO DISMISS

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Of course there are older authorities holding that coin-operated amusement games and the industry they support have no claim to protection from the Constitution–as was once the case with child laborers, disfranchised voters, segregated students, and indigent

defendants. The *Benjamin* case, cited by Appellee City of New York (Motion to Dismiss, p.6), is a well-chosen example. Indeed, promoters of illegal gambling traditionally thrived on confusion in the field, and often sought to increase it. See, King, "The Rise and Decline of Coin-Machine Gambling," 55 Jour. Crim. Law, Criminology and Police Science 199 (June 1964).

But *Korpan* (354 U.S. 271), recognizing that Congress "meant ... to distinguish between 'slot machines' operated as gambling devices and 'slot machines' which were used exclusively for amusement," was a sort of *Gideon* for the amusement industry. Since that decision (1957), Congress has further clarified the innocent status of amusement games, 15 U.S.C. 1178(2), (1962), and most states where their legality was formerly in doubt have revised their gambling laws, e.g., Texas Penal Code (Vernon) § 47.01(3) & (8) (1965)*, Kentucky Penal Code, § 528.010(4) (c) (2) (1966), Washington Revised Code, § 9.46.020(9) (d) (1971 and 1973), Michigan Stats. Anno. § 18.999(1) (1972), Hawaii Penal Code, § 1220(11) (1972)–as amended, 1973, § 712-1220), Revised Statutes of Nebraska, § 28-945 (1973), and Iowa Code § 99B.10 (1973).

Even in Ohio, the Ohio Supreme Court has rejected–on constitutional grounds–the draconian

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*Dates given are dates of revisions referred to.

ruling of *Benjamin*. See, *Dragelevich v. City of Youngstown*, 175 Ohio St. 23, 197 N.E. 2nd 334 (1964).

Appellee's Motion to Dismiss should be denied.

Respectfully submitted,

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